UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/682
11 November 1994

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 682

Case No. 751: DABIT

Against: The Commissioner General of the United Nations Relief and Work Agency for Palestine Refugees

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 13 May 1993, Costandi Awad Dabit, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees (hereinafter referred to as UNRWA), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 24 August 1993, the Applicant, after making the necessary corrections, again filed an application requesting the Tribunal, inter alia:

> "... to compensate him for the loss of earnings [due to] future unemployment, ... that he be compensated for the loss of opportunity ... due to unjustified dismissal.

Compensation & Damages	J.D.	9590.00
Loss of earnings (1990-1993)	J.D.	21950.00
Expected earnings due to promotion	J.D.	8260.00
	J.D.	39800.00

Add (at discretion of the Tribunal)

Loss of work opportunities cause by unfair dismissal	J.D.
Loss of earnings due to future unemployment	J.D.
	J.D.

...

... that his record be amended [accordingly] ... to clear him of the charges, and to allow him to resign rather than suffer dismissal [and that] as an alternative ... [the] Tribunal overturn the decision of the Joint Appeals Board and reinstate him in his former post."

Whereas the Respondent filed his answer on 21 January 1994;

Whereas the Applicant submitted an additional document on 1 October 1994;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 30 April 1987, as a Senior Clerk at the Kalandia Vocational Training Centre, at the grade 7, step 1 level, on a temporary indefinite appointment, subject to a one-year probationary period. The Applicant was transferred to the post of Senior Clerk in the Administrative Services Division of the Jerusalem Field Office, with effect from 12 April 1988. On 20 February 1990, the Applicant's services were terminated, pursuant to staff rule 109.1.

In a letter dated 5 January 1988, the Field Personnel Officer, West Bank, informed the Applicant that complaints had been received concerning his work performance and official conduct. Specifically, he noted that the Applicant had "failed to pay a bill to a newspaper" and "did not prepare receipt vouchers for beds resulting in the loss of NIS [New Shekels] 77.30." The Field Personnel Officer noted that the letter would be considered a "written censure" to be placed in his personnel file, and instructed that NIS 77.30 be deducted from the Applicant's salary.

On 23 January 1988, the Field Finance Officer wrote to the Field Personnel Officer in reference to the letter of censure which had been sent to the Applicant. In his memorandum, he noted, "[f]rom the documentation available to me the payment [of the newspaper bill] was not delayed", and with respect to the receipt vouchers "[the Applicant] assured me that he did not receive the NIS 77.30 ... and, therefore, could ... not have issued a receipt voucher." He suggested that the deduction of this amount from the Applicant's salary was "not justified" and recommended that the letter of censure be withdrawn "as it is not based on enough evidence to justify such an action."

On 9 February 1988, the Field Personnel Officer notified the Applicant that he had been selected to fill the post of Senior Clerk in the Administrative Services Division of the Jerusalem Field Office. With effect from 12 April 1988, he was transferred to this post, at the same grade, with a six month probationary period. On 28 July 1988, the Applicant was injured in a traffic accident and was absent from work on medical leave until 1 January 1989.

On 11 April 1989, the Field Administration Officer met with the Applicant to discuss the concerns raised in a draft confidential letter, which he gave to the Applicant, informing him that he could not be confirmed in his post as Senior Clerk because his work was not up to standard. In particular, he noted that the Applicant was "twenty minutes late to work almost every day, in addition to reading newspapers and magazines during office hours", and that he did not cooperate with his colleagues. In a further letter, dated 26 April 1989, the Field Administration Officer informed the Applicant that his confirmation would be considered after three months, upon receipt of a performance evaluation report.

In September 1989, the Applicant's performance was evaluated by his supervisor, who gave him an overall rating of "2", i.e. "a staff member who maintains only a minimum standard of efficiency." In a letter dated 18 September 1989, the Field Administration Officer informed the Applicant that in view of his unsatisfactory work performance, his annual increment and confirmation in his post

would be deferred for three months. He noted that his letter was a "final warning" and that further complaints about the Applicant's work performance would compel the Agency to take action, which might include "the imposition of disciplinary measures leading to your separation from the Agency's service."

In a memorandum dated 22 December 1989, the Administrative Services Officer, West Bank, informed the Field Administration Officer, West Bank, that the Applicant's performance had shown "a marked improvement" and recommended that he be confirmed in the post of Senior Clerk and promoted to the grade 8 level. In a performance evaluation report dated 17 January 1990, the Applicant was given, by his supervisor, an overall rating of "3", i.e. "a staff member who maintains a good standard of efficiency". In signing the report on 18 February 1990, the Field Administration Officer noted his disagreement with this rating and referred to a memorandum, dated 9 February 1990, in which the Administrative Services Officer had informed him that another staff member was doing the Applicant's work, in addition to his own.

According to a Note for the record, prepared by the Field Administration Officer on 17 February 1990, on 16 February, an incident took place in the office involving the photocopying of external vacancy notices. The Applicant refused to undertake the photocopying and distribution of the announcements, on the grounds that it was not his job. He was told that he could be dismissed for insubordination and he was asked to leave the office, which he did. In a letter dated 19 February 1990, to the Field Administration Officer, the Applicant referred to prior communications regarding his job description and noted that most of what he did fell under the category of "such other duties as may be assigned," depriving him of his right to perform his official duties.

In a letter dated 20 February 1990, to the Applicant, the Director of UNRWA Operations, after listing the concerns which had been expressed regarding the Applicant's performance, including the incident of 16 February, concluded as follows:

> "Based upon all the above, and additionally, a less than satisfactory periodic report, I regret to inform you that your service with the Agency is hereby terminated effective close of business on 20 February 1990 in the interests of the Agency under staff rule 109.1 ..."

In a letter dated 26 February 1990, to the Director of UNRWA Operations, the Applicant gave a different version of his record, including the incident of 16 February. He stated that the terms of his letter of appointment had not been observed and that he had been "delegated to perform less dignified work not provided for in the job description of my post." He requested that the decision to terminate his services be reviewed. In a reply dated 3 March 1990, the Director of UNRWA Operations confirmed the decision.

On 17 March 1990, the Applicant lodged an appeal with the Joint Appeals Board (JAB). On 21 November 1990, the JAB adopted its report. Its conclusion reads as follows:

> "The Board notes the provisions of staff rule 9.1 under which the Appellant's services were terminated and unanimously agreed that the Agency's decision to terminate the services of the Appellant was in order and in compliance with Staff Rules and Regulations, as well as with the terms and conditions of the Appellant's letter of appointment."

In a letter dated 18 December 1990, to the Commissioner General, the Applicant noted that the composition of the JAB which considered his case had been altered without notification to him. On 17 August 1992, the Director of Personnel, UNRWA, informed the Applicant that a new JAB would be constituted to consider his case. The JAB met between 7 and 9 December 1992. Its findings and recommendation read as follows:

> "III. <u>BOARD FINDINGS, ...</u>
>
> ...
>
> The Administration's decision of terminating the services of the Appellant as per its decision of 20 February 1990 had been utterly taken within the applicable Area Staff Rules and Regulations and the terms of the Appellant's letter of appointment.

IV. RECOMMENDATION

27. In view of the foregoing, the Board unanimously makes its recommendations that:

(a) The Administration's decision of 20 February 1990 be upheld, and

(b) The case be dismissed."

On 5 February 1993, the Commissioner General transmitted the JAB report to the Applicant and informed him, inter alia, as follows:

"... As you can see, the Board has unanimously recommended that the Administration's decision of 20 February 1990 to terminate your appointment be upheld and that your appeal be dismissed. I accept this recommendation and your appeal therefore stands dismissed."

On 13 May 1993, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The decision to terminate the Applicant's employment under staff rule 109.1 was arbitrary. All disciplinary measures taken against the Applicant were vindictive. He committed no offence that would justify the termination of his services.

2. The JAB neglected to take into consideration documents submitted by the Applicant and ignored the Applicant's version of events, relying on the facts provided by the Respondent. The JAB's consideration of the case was therefore biased.

Whereas the Respondent's principal contention is:

The decision to terminate the Applicant's employment was a valid exercise of the Respondent's authority under area staff regulation 9.1. The decision was not improperly motivated.

The Tribunal, having deliberated from 21 October to 11 November 1994, now pronounces the following judgement:

I. The Applicant contends that the decision to dismiss him was taken arbitrarily and in the absence of any offence on his part. He says that all disciplinary measures taken against him are unfounded.

The Applicant's work history is not a happy one. He was first engaged in 1987 and by January 1988, he had received a letter of censure. However, this letter was questioned by the Field Finance Officer, who praised the Applicant for his work ability. This assessment was, in turn, criticized by the Principal at the Kalandia Vocational Training Centre.

The Applicant's career took an upward turn when, in a memorandum dated 22 December 1989, the Administrative Services Officer, West Bank, was able to note an improvement in the Applicant's work. He recommended that the Applicant's evaluation be reconsidered and that he be promoted.

On 16 February 1990, a disputed incident occurred. The Administration's version is that the Applicant refused to carry out a specific task, the Applicant's explanation being that as he could not do the task properly, he asked the Field Administration Officer's secretary to do it. Subsequent to this incident, the Applicant received his notice of termination.

II. The Respondent refers to a conference with the Applicant in April 1989, primarily to discuss his work performance and his standards of conduct, particularly his lack of punctuality, his reading of newspapers and magazines during office hours and the lack of cooperation with his colleagues. According to the record, a draft confidential letter was unofficially delivered by the Field Administration Officer to the Applicant at the meeting. The Applicant's performance was to be reviewed in three months, upon receipt of another performance evaluation report.

The performance evaluation report of 13 September 1989 showed that the Applicant's judgement and other personal factors were below standard as were his industry, quality of output and punctuality. He was therefore given a final warning in relation to work performance.

The memorandum of 22 December 1989 noted an improvement in the Applicant's performance. However, the Respondent says that, in the performance evaluation report of 17 January 1990, while the Administrative Services Officer noted an improvement in work performance and rated the Applicant's performance and conduct as satisfactory, the Applicant's Principal, who signed this report on 18 February 1990, disagreed with these findings. He stated that subsequent events had overtaken the ratings. These events were, according to the Administrative Services Officer, the discovery that the work of the Applicant was being done by another person and the incident which occurred on 16 February 1990.

III. Although the Agency had been unhappy with the Applicant before February 1990 and the Applicant was himself unhappy in his work and uncertain about the work that he was to perform, the turning point seems to have been the incident of 16 February. There is a conflict in the accounts of what occurred.

According to the Applicant, while carrying out photocopying work, he found the machine to be faulty. The Administrative Services Officer told him that this work was that of the Field Administration Officer's secretary. The secretary ordered the Applicant to carry out the work himself and directed him to a different machine. His response was that he had other things to do. He was then told by the Field Administration Officer to submit his resignation.

The Respondent's description of the incident is quite different. He says that the Applicant was requested by his principal supervisor to arrange for photocopying and distribution of material, the procedure having been arranged several weeks previously. The Applicant refused to carry out this work. When

ordered to do so by the Field Administration Officer, he, in the presence of other staff members, refused.

Even if the Applicant had been subjected to contradictory orders, as he claims, and even if he had been in doubt as to what exactly his duties were, surely he could reasonably have been expected to do what the Field Administration Officer told him to do, even if the message was communicated through the secretary.

From the history of the Applicant's work with the Agency, up to and including the incident in February 1990, there emerges no impression of bias or prejudice. There certainly was annoyance on the part of the Field Administration Officer. Even the Administrative Services Officer, who wrote the memorandum of December 1989, commending the improvement in the Applicant's work, wrote in the memorandum of 9 February 1990, that, for the previous 15 months, another staff member had been carrying out the Applicant's work as well as his own.

These were the circumstances in which the Applicant was dismissed. What of the Respondent's action in dismissing him?

IV. The Applicant's letter of appointment provided that "This appointment may be terminated at any time in accordance with the Staff Regulations and Staff Rules". This, of course, does not give the Respondent an unfettered right to dismiss. The termination was made pursuant to area staff regulation 9.1 which provides, "The Commissioner-General may at any time terminate the appointment of any staff member, if, in his opinion, such action would be in the interest of the Agency." The Respondent's power under the regulation must be exercised without improper motivation or abuse. The question, therefore, is whether there is evidence that the decision was procedurally defective or improperly motivated.

The thrust of the evidence is that, although the Applicant's work performance was less than satisfactory for, at least, a good part of his period of service, efforts were made to maintain him in the Agency. Both the Field Administration Officer and the

Administrative Services Officer, at different times, were positive in their actions towards the Applicant.

The Tribunal therefore finds, based on this evidence, that the decision to terminate the Applicant's appointment was a valid exercise of the Respondent's authority and should be upheld.

V. Finally, in relation to the Applicant's criticism of the Joint Appeals Board, the fact that the Board's report or recommendation does not discuss every piece of evidence or every submission does not invalidate its findings.

VI. For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Samar SEN
President

Hubert THIERRY
Member

Francis SPAIN
Member

New York, 11 November 1994

R. Maria VICIEN-MILBURN
Executive Secretary